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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 10

UNITED STATES OF AMERICA EX REL. LEO STAPF, PETITIONER,

vs.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 29, 1932

CERTIORARI GRANTED APRIL 11, 1932

(36,553)

(36,553)

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

M14-159

UNITED STATES OF AMERICA ex Rel. LEO STAPF, Relator,

against

BENJAMIN M. DAY, Commissioner of Immigration at the Port of New York, Respondent

STATEMENT UNDER RULE 13, SUBDIVISION 4

The petition for the Writ of Habeas Corpus was issued on the 5th day of June, 1931, and was returned on the 22nd day of June, 1931.

All parties are set forth in the caption. There have been no changes since the action was commenced.

The return of the Writ of Habeas Corpus was filed on the 22nd day of June, 1931.

Writ dismissed by Hon. William Bondy, Opinion filed June 22nd, 1931.

An order was on file on the 23rd day of June, 1931, dismissing the Writ of Habeas Corpus herein.

An appeal was taken on the 23rd day of June, 1931.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

M14-159

UNITED STATES OF AMERICA ex Rel. LEO STAPF

vs.

BENJAMIN M. DAY, Commissioner of Immigration, Ellis Island, New York

WRIT OF HABEAS CORPUS

The President of the United States of America to Benjamin M. Day, Commissioner of Immigration, and/or to whomsoever else may have custody and charge of the body of the above-named alien, Greetings:

The body of Leo Stapf, by you illegally detained and imprisoned, it is said, have you before the District Court of

the United States in and for the Southern District of New York at Room 235, U. S. Post Office and Federal Courts Building, New York at 10:30 o'clock in the forenoon on the 5th day of June 1931, together with the cause of his detention to undergo and receive what this court may deem fit and proper in the premises, and have you then and there this writ.

Witness Honorable John C. Knox, Judge of the District Court of the United States in and for the Southern District of New York this 2d day of June, in the year of our Lord [fol. 3] nineteen hundred thirty-one, and of the Independence of the United States of America the one hundred fifty-fifth.

Charles Weiser, Clerk of the District Court of the United States, Southern District of New York. (Seal.)

Writ of allowed 6/2/31.

Wm. Bondy, U. S. D. J.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR A WRIT OF HABEAS CORPUS

To the Honorable Judges of the District Court of the United States, Southern District of New York:

Your petitioner, Leo Stapf, for his petition for a writ of habeas corpus respectfully shows

That he was born on March 17, 1875 at Eichenau, Germany.

That he first entered the United States at the Port of New York as a member of the crew of the S. S. "Hansa" on or about February 15, 1923, that at that time he deserted said vessel and that he has resided continuously in the United States ever since.

That early in March 1929 he signed the ship's articles of the American vessel "Amerika" as a member of the crew for a round trip from New York to Bremerhaven, Germany, and return to New York, which contract he duly performed.

That on March 27, 1931, while employed in a hotel at Key West, Florida, he was taken into custody by United States immigration officers and accorded a hearing under a Warrant of Arrest, charging that he was unlawfully in [fol. 5] the United States in that he had remained therein for a longer time than permitted under the Immigration Act of 1924 and the regulations made thereunder.

That at the completion of his round trip voyage as a member of the crew of the S. S. "Amerika" early in April 1929 he was not admitted by the immigration authorities merely to reship foreign within sixty days or for any other limited period of time, but, on the contrary, was discharged and paid off to resume his status in the United States.

That deponent is informed and verily believes that his round trip voyage did not break the continuity of his residence in the United States, that said residence dates from 1923, that more than eight years have elapsed since said entry and that his deportation is barred by the express provisions of Section 34 of the Immigration Act of 1917.

That notwithstanding all of the foregoing, the Secretary of Labor has issued a warrant for his deportation to Germany and he now is illegally detained, imprisoned and restrained of his liberty by the respondent at Ellis Island, New York Harbor, within the jurisdiction of this Honorable Court.

Wherefore he respectfully prays that a writ of habeas corpus issue herein requiring the respondent to produce before this Honorable Court his body, together with the cau-es of his detention, to receive and abide by such order as may be made herein.

Leo Stapf.

[fol. 6] *Duly sworn to by Leo Stapf. Jurat omitted in printing.*

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS

SOUTHERN DISTRICT OF NEW YORK, ss:

V. G. MACINTOSH, being duly sworn, says that he is and during all the times herein mentioned has been an immi-

grant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus within.

In compliance with the direction of this Court, the body of the said alien in his own proper person was produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

(a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the [fol. 8] said alien was held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above-named alien, copies of which are produced and filed herewith as part of this return:

1. The relator is a German alien. He last entered the United States on April 1, 1929.

2. That on March 20, 1931 the Department of Labor issued its warrant for the arrest of the relator on the ground that the relator remained in the United States for a longer time than permitted under the Act of May 26, 1924 or regulations [fol. 9] made thereunder, and on the further ground that he was not in possession of an unexpired immigration visa.

3. That on March 27, 1931, he was given a full and fair hearing under the said warrant, and on the 3rd day of April, 1931, the Department of Labor duly issued its warrant of deportation of this relator to Germany.

4. The evidence adduced at the hearing afforded the relator by the Department of Labor fully sustained the ground contained in the warrant of arrest, and the warrant of deportation. The relator admitted that he first entered this country in 1923 by deserting his ship, the S. S. "Hanser", and that on this last trip, April 1, 1929, he admits that when he was discharged from the S. S. "America", he was not in possession of any immigration visa and did not pay a head tax.

5. Deponent denies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the petition for the writ, except those matters heretofore expressly admitted.

Wherefore deponent prays that the writ of habeas corpus heretofore issued herein be dismissed and the relator be remanded to the custody of the respondent.

V. G. Macintosh.

Sworn to before me this 11th day of June, 1931. Armand Chankalian, Notary Public, New York Co. Clerk's No. 339, Reg. No. 3C426. Commission expires March 30, 1933.

[fol. 10] EXHIBITS ATTACHED TO RETURN

55722/571. W.

March 21, 1931.

District Director of Immigration, Jacksonville, Florida:

Pursuant to request of the Commissioner of Immigration, Ellis Island, N. Y. H., the bureau transmits herewith

a warrant for the arrest of Leo Stapf alias Steiner, whose address is given as Kassa Marina Hotel, Key West, Florida. A copy of a report pertaining to this alien is also inclosed for your information.

(Signed) George J. Harris. George J. Harris, Acting Commissioner General. R.

Mar. 23, 1931, Mail and Files.

Incls. 48606.
" 48607.

Official copy furnished the Commissioner of Immigration, Ellis Island, N. Y. H., for his information, reference being had to his file No. 99163/17.

(Signed) George J. Harris. George J. Harris, Acting Commissioner General. JR/ds. R.

Mar. 23, 1931, Mail and Files.

[fol. 11] Warrant—Arrest of Alien

UNITED STATES OF AMERICA:

Department of Labor, Washington

No. 55722/571

To District Director of Immigration, Jacksonville, Florida, or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Leo Stapf alias Steiner who landed at the port of New York, N. Y., on or about the 15th day of April, 1929, has been found in the United States in violation of the immigration act of May 26, 1924, for the following among other reasons:

That he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder,

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in my by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to

enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1931." Pending further pro-
[fol. 12] ceedings the alien may be released from custody under bond in the sum of $500.

(Signed) W. N. Smelser.

May 23, 1931, Mail & Files.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 20th day of March, 1931.

W. N. Smelser, Assistant to the Secretary of Labor.

LVB. WSP.

[fol. 13] Passport Data for Alien Deportees

U. S. Department of Labor, Immigration Service

District File No. 3106/164. Bureau File No. 55722/571

Name of alien (in full): Leo Stapf, alias Leo Steiner.

Where detained: Key West, Fla., Monroe County Jail.

Age: 56. Date of Birth: March 17, 1875. Nationality: Germany.

Race: German. Subject of Germany. Occupation: Butcher.

Place of birth: Eichenau, Wurttemberg, Germany.

Nearest large city: Stuttgart, 100 kilometers south.

Last address in native country: Muggenkampstrasse No. 35, Hamburg, Germany.

Date left native country: March, 1929.

Last address in country of citizenship: Muggenkampstrasse No. 35, Hamburg, Germany.

Last foreign address: Same.

Date left last foreign address: March, 1929. Date of arrival in U. S.: On or about April 15, 1929.

Port of arrival: New York (Hoboken, N. J.). Name of vessel: "America".

[fol. 14] Married or single: Married. Name and address of wife or husband: Frieda Brinnker, Hamburg, Germany, address unknown.

Father's name and place of birth: Michael Stapf, born Eichenau, Wurttemberg, Germany.

Father's present address: Deceased.

Mother's maiden name and place of birth: Rosa Stapf, born Eichenau, Wurttemberg, Germany.

Mother's present address: Deceased.

Names and addresses of near relatives in U. S.: None.

Names and addresses of relatives abroad: Brother, Fritz Stapf, Eichenau.

Names and location of foreign schools attended: Public school at Lentsiedel, Wurttemberg.

Names and locations of foreign churches attended: Lutheran Church at Lentsiedel.

Where baptized: Lutheran Church Lentsiedel. Date of baptism: ——.

Name and address of last employer in country of citizenship: Hamburg-American Line on ships.

Has alien passport: No.

Other documentary evidence: Seaman's papers.

Charges against alien in W/D: Remained longer; no immigration visa.

Personal description: Height 6′ 0″. Weight: 202. Eyes: Brownish blue. Hair: Light brown. Face: Broad. Nose: Prominent. Mouth: Regular. Distinctive marks: Small line scar, right eyebrow; small brown mole left cheek; almost bald.

Ordered deported at expense of Govt.

[fol. 15] U. S. Department of Labor, Immigration Service

File No. 101/71

Report of Hearing in the Case of Leo Stapf, alias Steiner

Under Department warrant No. 55722/571.

Dated March 20, 1931.

Hearing conducted by Inspector Albert S. Caviness at Key West, Florida. Date, March 27, 1931.

Alien taken into custody at Key West, Florida, at 10:00 A. M. Mar. 27, 1931, by Patrol Insprs. Russell and Reed and now detained in Monroe County Jail, Key West, Florida.

Testimony taken and transcribed by Albert S. Caviness, Immigrant Inspector.

Said Leo Stapf, alias Steiner, being able to speak and understand the English language satisfactorily, no interpreter was employed.

Said Leo Stapf, alias Steiner, was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained [fol. 16] to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was not accepted. The alien being first duly sworn, the following evidence was presented:

Q. What is your correct name?

A. Leo Stapf on all my papers, but my full name is Leonhard Stapf.

Q. Have you ever been known by another name?

A. Yes, Leo Steiner, that is all.

Q. You are advised that under these proceedings you have the right to be represented by counsel. Do you desire to obtain the services of a lawyer?

A. I have no money now only what I earned last month. I will not get a lawyer.

Q. Do you waive your right to be represented by counsel and are you now ready to proceed with this hearing?

A. Yes, I'll tell you anything what you ask. I don't want to go to jail. I have nothing, only I want to stay here.

Q. You are further advised that any statements you make at this time may be used against you in criminal proceedings if necessary. Are you ready and willing to give complete and true information regarding yourself at this time?

A. Yes, certainly.

Q. How much money have you now?

A. $3.50, and this month's salary will be $125.00.

Q. What is your nationality?

A. German.

Q. When and where were you born?

A. March 17, 1875, at Hamburg, Germany.

Q. What is your race?

A. German.

Q. Are you a citizen of Germany at the present time?

A. Yes. I took out my first papers, but I came back to [fol. 17] New York too late and I couldn't pay my head tax any more.

Q. How old are you now?

A. 56 years.

Q. What is your occupation?

A. Butcher.

Q. Where are you employed?

A. In the Casa Marina Hotel here in Key West.

Q. Were you born right in Hamburg, Germany, or in a small place near Hamburg?

A. A small place near Hamburg. I gave it in my first papers as Hamburg.

Q. What is the name of the place where you were born?

A. Eichenau; that is about thirty-five miles from Hamburg south.

Q. How long have you been employed at the Casa Marina Hotel?

A. From the 28th of December.

Q. Have you relatives in Germany now?

A. No.

Q. Are you married or single?

A. I was married.

Q. Are you divorced or widowed?

A. I am off of my wife. I am not divorced; she is over there.

Q. What is the name and address of your wife?

A. Frieda Breinker. I don't know her address. She was in Hamburg.

Q. Was Frieda Breinker your wife?

A. Yes, I was married with her.

Q. Do you support her now?

A. No; I don't know where she is. She was gone for a long time.

Q. What was your last address in Germany?

A. Miggenkampstr. 35, Hamburg, Germany.

Q. When did you last leave your native country?

A. I guess that was in 1923, I only made a trip over there and back in 1929.

Q. What is the name of the ship you last returned on in 1929?

A. S. S. "America" of the United States Line. The S. S. "Hanser" was 1923.

[fol. 18] Q. How long did you remain in Germany in 1929?

A. Just about two and a half days. We laid at the port of Bremerhafen.

Q. On what date did you return to the United States?

A. It was in the Springtime, about March or April of 1929.

Q. Were you employed on the S. S. "America" at that time?

A. Yes, I worked in the kitchen.

Q. Did you pay the immigration head tax when you returned in 1929?

A. I liked to pay it but I couldn't. The law is so since 1924 that I can't pay. I hear so.

Q. Did you ever pay the immigration head tax?

A. No, I only paid for the first paper in the City Hall in New York.

Q. Were you discharged from the S. S. "America" or did you desert that ship?

A. I was discharged. I have discharge papers; not here but in New York. I would pay the head tax every day when I can, but I did not know where the Barge Office was to pay the head tax when I took out my first papers. Then I work out of town and could not pay it.

Q. At what port did you get your discharge from the S. S. "America" the last trip?

A. At Hoboken, N. J.

Q. What is the name and place of birth of your father?

A. Michael Stapf. He was born in Germany. He is dead now.

Q. What is the name and place of birth of your mother?

A. Rosa Schust, born in Buch, Germany. She is dead.

Q. Have you any relatives in the United States?

A. No.

[fol. 19] Q. What is the name and address of your nearest relative abroad?

A. My brother, Fritz Stap. He lives in Eichenau, Germany, where I was born.

Q. What is the name and location of the foreign school you attended?

A. Lentsiedel Public School. Lentsiedel is a larger village near Eichenau.

Q. What is the name and location of the church you attended?

A. Lutheran Church at Lentsiedel and in Hamburg, Germany.

Q. Where were you baptized or christened?

A. In the Lutheran Church at Lentsiedel, Germany.

Q. On what date were you christened?

A. I don't know for sure. When I was 14 or 15 years old.

Q. What is the name and address of your last employer in Germany?

A. I last worked for the Hamburg American Line on board ship. In Germany I worked as a butcher for Hargen, but he is dead.

Q. Have you a passport?

A. Well, I have only my discharge papers from the ships.

Q. Did you ever have a regular German passport?

A. No.

Q. Have you any documentary evidence of your citizenship?

A. Well, my seaman's papers, that's all. And I believe I have a German sailor's passport in New York, but I am not sure.

Q. At what address in New York are these papers?

A. 374 E. 14th Street.

Q. In whose care are they at the present time?

A. That is a rooming house and they have lots of room and I left my trunk there. The papers are in my trunk.

Q. At the time you were discharged from the S. S. "America" at Hoboken, N. J., about March or April of [fol. 20] 1929, were you discharged to reship foreign or were you admitted to the United States?

A. I was discharged because I only went for the trip, that's all. I wanted to work here and only had the job for one trip. I have my discharge paper in New York.

Q. By whom were you discharged?

A. By some officer from the ship in the Deck Department.

Q. Were you examined by an immigration officer there?

A. No, no; there was no immigration men there. I only showed my first papers to the chef. I signed on on the ship and I signed off on the ship. There was no immigration officer there.

Q. I have a warrant from the Department of Labor in Washington which was read and explained to you. This warrant for your arrest charges that you remained in the United States for a longer time than permitted under the

Act of May 26, 1924, or regulations made thereunder. Have you anything to say to this charge?

A. Well, I have nothing to say to. I only like to stay here in this country.

Q. Did you obtain an immigration visa from any American Consulate before you returned to the United States in 1929?

A. No; I didn't pass any American Consulate or any Immigration on the S. S. "America." Outside on the pier from the United States Line in Hoboken, N. J., there is an office where the people are hired and discharged. It is right next door to the Army recruiting office. I don't know whether or not that is an immigration office.

Q. Did you ever go to any American Consulate in Germany or any other foreign country?

A. No. We all have to work on board the ship over there. We were only two and a half days over there.

Q. You are also advised of the additional charge that you were not in possession of an unexpired quota immigration [fol. 21] visa at the time of your entry. Have you anything to say to this charge?

A. No, there is nothing to say. We are signed off and that's all when we come to Hoboken.

Q. You are further advised that authority is granted for your release from custody under bond in the sum of $500 pending the final disposition of your case. Have you any way to make this bond?

A. No, not here. If I was in New York maybe if I have a friend he would give me the $500. I am a stranger here and only have what I work for in the Casa Marina Hotel.

Description of Alien

Age 56, male, married, height 6 feet 0 inches; weight about 202 lbs.; brownish blue eyes; light brown hair; regular face; rather large nose; regular mouth; almost bald; small line scar in right eyebrow, and small brown mole on left cheek.

Summary

This alien admits that he never paid the immigration head tax to be legally admitted to the United States for residence, and that he never had an immigration visa en-

titling him to come to this country. He last entered the United States at Hoboken, N. J., about March or April of 1929 as a seaman.

The warrant for his arrest charged that he remained in the United States for a longer time than permitted under the Act of May 26, 1924, or regulations made thereunder. I am of the opinion that the charge has been sustained in this hearing, and that the additional charge, "That he is in the United States in violation of the immigration act of 1924 in that he is not in possession of an unexpired immigration visa", has also been sustained.

[fol. 22] Recommendation

It is respectfully recommended that this alien be deported to Germany, the country whence he came.

Albert S. Caviness, Immigrant Inspector.

Leo Stapf (signature of alien).

I certify that the foregoing is a true and correct record of the hearing in this case.

Albert S. Caviness, Immigrant Inspector.

[fol. 23] Transmission of Records of Warrant Hearings

U. S. Department of Labor, Immigration Service

Refer to No. 101/71

Port of Key West, Fla., March 28, 1931.

Commissioner General of Immigration, Washington, D. C. (through District Director, Jacksonville, Fla.):

Bureau file No. 55722/571

Name of alien: Leo Stapf, alias Leo Steiner, alias Leonhard Stapf.

Nationality: Germany.

Country to which deportable: Germany.

Name and address of nearest relative in that country: Wife, Freida Breinker, Miggenkamp Str. 35, Hamburg, Germany.

If deportable to Mexico, through or to what port: ——.

Charges additional to those contained in warrant: Visible.

Telegraphic decision to (Port) requested.

Whether detained at Government expense and if so, cost of maintenance: Detained in Monroe County Jail, Key West, Fla., at the expense of the Government at 65c. per day.

[fol. 24] Whether released under bond: No.

Passport status: Not in possession of passport or any other documentary evidence.

Comment

This alien admits that he deserted at New York from the S. S. Hanser about Spring of 1923 and that he made a trip to Germany and again was discharged without inspection in March or April of 1929.

The Warrant charges "Remained Longer" and the additional charge "Visible" has been added and I am of the opinion that both charges have been sustained in this hearing.

Alien entered March or April, 1929.

New York from SS. "America."

Claude Albury, Inspector in Charge.

[fol. 25] Office of District Director, Jacksonville, Florida

March 30, 1931.

Key West, Fla., file No. 101/71.
Jacksonville file No. 3106/164.
Bureau file No. 55722/571.

Attached letter from the Inspector in Charge at Key West, Florida, dated the 28th instant, respectfully forwarded the Commissioner-General of Immigration, Washington, D. C., together with record of hearing, Form 617, and Form 522 in duplicate, this office concurring in the recommendation of the examining inspector that the alien Leo Stapf, alias Steiner, be ordered deported to Germany, the country of his nativity, on the ground that he has remained longer than permitted under the Act of 1924 and regulations made thereunder.

It is believed that the additional charge "Visible", is untenable in this case for the reason that the alien entered as a seaman and was discharged to reship foreign, and further, that even if the charge were tenable it could not be sustained for the reason that the alien was not con-

fronted with the fact that such additional charge would be lodged against him.

Passport will be required for the deportation of this alien but same will be secured locally.

It is respectfully requested that seamanship privilege be accorded this alien, reshipment one way foreign to be considered a satisfactory compliance with the terms of the warrant of deportation.

Alien entered: New York, N. Y., Mar. or Apr. 1929, SS. "America."

Thos. V. Kirk, District Inspector of Immigration, Jacksonville District.

99163/17

[fol. 26] Report of Alien Illegally in the United States

Full name of alien, age and nationality: Leo Stapf, alias Leo Steiner, 44, German.

His present home address: Kassa Marina Hotel, Key West, Florida.

His present business address: ——.

Name of ship on which alien arrived: Unknown.

Date and port of arrival in U. S.: New York, April, 1929.

Whether as passenger or member of crew: Crew.

Reasons for belief that alien is in the U. S. in violation of Law: His wife informed the complainant that the above had deserted ship.

Hans Spirgatis, being duly sworn, deposes and says that he has read the foregoing report and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true.

(Signature:) Hans Spirgatis, (Address:) 349 85th St., Brooklyn, N. Y.

Sworn to before me this 17th day of Mar., 1931.
Insp. John P. Loftus.

[fol. 27] Application for Warrant of Arrest under Section 19 of the Act of February 5, 1917

U. S. Department of Labor, Immigration Service

99163/17

(Place:) Ellis Island, N. Y. H., March 18, 1931.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Leo Stapf, alias Steiner, age 44, native and citizen of Germany, arrived at New York, as member of the crew of unknown ship, April, 1929; not verified; the alien named in the attached certificate, upon the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants. Application for a warrant based on conviction for a crime committed in the United States should be accompanied by a copy of the alien's commitment obtained from the warden of the institution wherein he is confined, or a certificate of conviction obtained from the clerk of the court wherein sentence was pronounced.)

(2) The present location and occupation of above-named alien are as follows:
Kassa Marina Hotel, Key West, Fla.

[fol. 28] Remained Longer

From attached copy of sworn statement, in duplicate, it *is* appears that above named alien is in the United States in violation of law in that he has remained in the United States for a longer period than permitted under the immigration act of May 26, 1924, or the regulations made thereunder.

Complaint indicates the advisability of the issuance of a warrant of arrest prior to approaching alien.

Please transmit warrant to Key West, Fla., for service.

Pursuant to Rule 18 of the Immigration Regulations there is attached hereto and made a part hereof the certificate presented in subdivision B of said Rule, as to the landing or entry of said alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

(Signature:) Byron H. Uhl, (Official Title:) Assistant Commissioner of Immigration, New York District. FH:RS.

Inc. No. 97039.

[fol. 29] 55722/571—Jacksonville

April 3, 1931.

In re Leo Stapf, alias Steiner, alias Leonhard Stapf, 56.

This case comes before the Board of Review in warrant proceedings.

No hearing.

This record relates to a native of Germany, German race, age 56, male, married, butcher, who last arrived at the port of New York on April 1, 1929, as a member of the crew of the S/S "America" and was discharged.

Nearest relative abroad: Wife, Frieda Breinker, Miggenkamp Str. 35, Hamburg, Germany.

Hearing was held at Key West, Florida, March 27, 1931, before Immigrant Inspector Albert S. Caviness, and alien is detained at the expense of this Service.

This alien claims to have first come to the United States in 1923 on the SS. "Hanser". While it is not definitely stated in the record whether or not he was a seaman at that time the Inspector in Charge at Key West states that the alien admits that he deserted the SS. "Hanser" in the spring of 1923. The alien admits that he was not in possession of an immigration visa at the time of last entry and did not pay head tax. The additional charge was placed against him "that he was not in possession of an immigration visa". This charge is not applicable.

It is recommended that alien be deported to Germany at government expense on the ground:

That he is in the United States in violation of the Immigration Act of 1924 in that he has remained in the United

States for a longer period of time than permitted under the said Act or regulations thereunder.

[fol. 30] Warrant—Deportation of Alien

United States of America, Department of Labor, Washington

No. 55722/571

To District Director of Immigration, Jacksonville, Florida; Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the United States Immigration Service:

Whereas, from proofs submitted to me Assistant to the Secretary, after due hearing before Immigrant Inspector Albert S. Caviness, held at Key West, Florida, become satisfied that the alien Leo Stapf, alias Steiner, alias Leonard Stapf, who landed at the port of New York, N. Y. ex SS. "America", on the 1st day of April, 1929, has been found in the United States in violation of the immigration act of May 26, 1924, to wit, of February 5, 1917, to wit, that he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder, and may be deported in accordance therewith:

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Germany the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1931" including the expense of an attendant, if necessary. The alien may be permitted to depart volun-[fol. 31] tarily, or ship foreign one way, without expense to the United States, to any country of his choice, except foreign contiguous territory or adjacent islands, under safeguards, such departure to be verified, and to be considered a satisfactory compliance with the terms of this warrant, the alien to be advised that acceptance of this privilege does not entitle him to reenter the United States.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 3rd day of April, 1931.

(Signed) W. N. Smelser, Assistant to the Secretary of Labor.

In United States District Court

Memorandum of Hon. William Bondy, J.

The attorney for the relator conceding that the facts herein are ruled by the decision in U. S. ex rel. Fernandez v. Day affirmed by the Circuit Court of Appeals, June 8, 1931, the writ must be dismissed.

Wm. Bondy, U. S. D. J.

June 22, 1931.

[fol. 32] In United States District Court

M14-159

United States of America ex Rel. Leo Stapf, Relator,

against

Benjamin M. Day, Commissioner of Immigration, Respondent

Order Dismissing Writ—June 23, 1931

The writ of habeas corpus heretofore sued herein, having regularly come on to be heard before me on the 12th day of June, 1931, and after hearing J. Waisman, attorney for the relator, in support thereof, and David Paley, Assistant United States Attorney for respondent, in opposition thereto, and due deliberation having been had, it is

Ordered that the writ of habeas corpus be, and the same hereby is dismissed and the relator Leo Stapf, be and he hereby is, remanded to the custody of the respondent.

Wm. Bondy, United States District Judge.

[fol 33] In United States District Court

[Title omitted]

Petition for Allowance of Appeal

The petitioner, Leo Stapf, by his attorney, J. Waisman, feeling aggrieved by the Order and Judgment made on the 23 day of June, 1931, by this Court, dismissing the writ of

habeas corpus, herein, does hereby appeal from the order and judgment of this Court to the United States Circuit Court of Appeals for the Second Circuit, and prays that this appeal may be allowed and the transcript of the record of the proceedings and papers upon which the said order and decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, June 23, 1931.

J. Waisman, Attorney for Relator. Office and P. O. address: 38 Park Row, Borough of Manhattan, New York City.

To George Z. Medalie, U. S. Attorney for the Southern District of New York.

To Charles Weiser, Clerk of the U. S. District Court, Southern District of New York.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

On reading the petition of Leo Stapf, made by his attorney, J. Waisman, dated June 23, 1931, for appeal and consideration of the Assignment of Errors presented herewith, it is

Ordered that the appeal herein be allowed as prayed for and that pending its determination the said Leo Stapf, shall be released from custody upon giving bail by bond or undertaking in the sum of fifteen hundred dollars, and it is

Further ordered that a certified copy of the record of all proceedings herein be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated New York, June 23, 1931.

Wm. Bondy, U. S. D. J.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the relator in the above-entitled cause and files the following Assignment of Errors which he will rely

upon in the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this court on the 23rd day of June, 1931.

The court erred in dismissing the writ of habeas corpus, because:

1. The relator, a seaman, entered the United States in 1923, and never having left the United States except as a member of the crew of an American vessel making a round trip from a port of the United States and back again, has never left the United States, nor relinquished his domicile within the meaning of the law.

2. The relator being a seaman who entered the United States unlawfully by deserting his ship, and having resided here for more than three years prior to his arrest, his deportation is barred by Section 34 of the Act of 1917.

[fol. 36] Whereas, by the Law of the Land, the said writ of habeas corpus should have been sustained, now the said Leo Stapf, by his attorney, J. Waisman, prays that the errors aforesaid, and other errors in the record and proceedings, the judicial determination and decision aforesaid made on the 23rd day of June, 1931, be set aside and for naught be held and esteemed, and that the writ of habeas corpus herein be sustained.

Dated New York, June 23, 1931.

J. Waisman, Attorney for Relator. Office and P. O. address: 38 Park Row, Borough of Manhattan, New York City.

[fols. 37 & 38] Citation, in usual form, omitted in printing.

[fol. 39] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true copy of the transcript of the record of the said Dis-

trict Court in the above-entitled matter as agreed on by the parties.

Dated November 16, 1931.

J. Waisman, Attorney for Relator. George Z. Medalie, United States Attorney, Attorney for Respondent.

[fol. 40] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 41] In United States Circuit Court of Appeals for the Second Circuit, October Term, 1931

No. 260

Argued January 5, 1932. Decided January 5, 1932

United States ex rel. Leo Stapf, Relator-Appellant,

v.

Edward Corsi, as Commissioner of Immigration, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Augustus N. Hand, and Chase, Circuit Judges

J. Waisman, of New York City, for appellant.
Murray I. Gurfein, of New York City, for appellee.

Opinion

Per Curiam:

Order affirmed in open court.

[fol. 42] In United States Circuit Court of Appeals, Second Circuit

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the courtrooms, in the Post Office building, in the city of New York, on the 11th day of January, one thousand nine hundred and thirty-two.

UNITED STATES ex rel. LEO STAPF, Relator-Appellant,

v.

EDWARD CORSI, as Commissioner, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

DECREE—Filed Jan. 12, 1932

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 43] [File endorsement omitted.]

[fol. 44] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 45] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 11, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,553. U. S. Circuit Court of Appeals, Second Circuit. Term No. 10. United States of America ex rel. Leo Stapf, petitioner, vs. Edward Corsi, Commissioner of Immigration at the Port of New York. Petition for a writ of certiorari and exhibit thereto. Filed February 29, 1932. File No. 36,553.

PETITION FOR A WRIT OF CERTIORARI

FILE COPY

FILED
FEB 29 1932
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. [redacted] 10

UNITED STATES OF AMERICA ex REL. LEO STAPF, PETITIONER,

vs.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York.*

(36,553)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 739

UNITED STATES OF AMERICA ex Rel. LEO STAPF, Petitioner,

vs.

EDWARD CORSI, Commissioner of Immigration at the Port of New York, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioner, by his attorney, Harold Van Riper, respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above-entitled case.

Questions Presented.

During the World War and after its close, while the United States was endeavoring to man its merchant marine, alien seamen were encouraged to become members of the crews of American vessels because there

were not enough American seamen available. To accomplish this purpose a large number of alien seamen deserted their vessels and entered and faithfully worked in our service. It is a matter of common knowledge that our merchant marine did not attain the magnitude then anticipated, wherefore, many of such seamen secured positions or established businesses ashore, married and have children. All those who came prior to July 1, 1924, and have not since been outside the territorial limits of the United States, are immune from deportation by statutory limitation (Secs. 19 & 34, Act of 1917, 8 U. S. C. 155 & 166).

The question involved herein is as to whether, if such an alien, in accordance with the provisions of our laws relating to our merchant marine, signs the ship's articles of an American vessel at an American port for, and makes, a round trip from said American port back to said American port, and said vessel touches at a foreign port enroute, upon such return to said American port he is to be regarded as a "*seaman of the United States*" within the meaning of the laws relating to the merchant marine, or is to be regarded as an "*alien seaman*" within the meaning of the immigation laws.

This is not the question that was before this Honorable Court in *U. S. ex rel. Claussen* v. *Day* (279 U. S. 398), wherein the proceedings were brought not under Sec. 34 of the Act of 1917 (8 U. S. C. 166) applicable to seamen, but under Sec. 19 thereof (8 U. S. C. 155), applicable to aliens in general, on the ground that the alien had been convicted of a crime within five years

after an entry; nor is it the question that was involved in *Phillipides* v. *Day,* 51 S. Ct. 358, which related to a seaman who had entered the United States subsequent to July 1st, 1924, and as to whom it was held that the three-year limitation contained in Sec. 34 of the 1917 Act (8 U. S. C. 166) did not apply inasmuch as he had originally entered and therefore was properly deportable under the Immigration Act of 1924.

Statement.

The relator-appellant is a seaman of the German race. In February, 1923, he entered the United States as a member of the crew of the S. S. "HANSA" (R. 17 & 29), and has resided here continuously ever since. In March, 1929, at New York, under our laws relating to the merchant marine, he signed the ship's articles of the American vessel "AMERIKA", as a member of its crew for a round trip continuous voyage from New York to New York, touching at Germany enroute, which contract he duly performed (R. 18).

The government is seeking to deport him on the ground that he has remained in the United States for a longer time than permitted under the Immigration Act of 1924 (R. 30).

The Secretary of Labor's warrant of arrest issued herein on or about March 20, 1931 (R. 11).

The Secretary of Labor's warrant of deportation issued herein on or about April 3, 1931 (R. 30).

The decision of Hon. William Bondy, D. J., citing the unreported case of *Fernandez* v. *Day,* which in turn cites *Claussen* v. *Curran,* 279 U. S. 398, appears at

page 31 of the record herein, and is dated June 22, 1931.

The per curiam affirmation thereof by the Second Circuit Court of Appeals appears at page 41 of the record herein, and is dated January 5, 1932.

The order of the Second Circuit Court of Appeals herein sought to be reviewed is dated January 11, 1932, and appears at page 41 of the record herein.

The mandate already has gone down from the Second Circuit Court of Appeals to the United States District Court for the Southern District of New York.

Specification of Errors to be Urged.

The errors which the petitioner urges as ground for the granting of the writ of certiorari and for reversal of the judgment of the Circuit Court of Appeals for the Second Circuit are:

1. The Circuit Court of Appeals erred in sustaining the order of the Trial Court.

2. It erred in holding that petitioner is subject to deportation under Sec. 14 of the Immigration Act of 1924 (8 U. S. C. 214) as having "remained in the United States for a longer time than permitted under the said Act or regulations made thereunder".

Reasons for the Petition.

The reasons for which the petition is presented are:

(1) That the Circuit Court of Appeals has decided an important question of Federal law, which has not been, but should be, settled by this Court (Rule 35).

(2) That the Circuit Court of Appeals for the Second Circuit has rendered a decision in conflict with decisions of the Circuit Court of Appeals for the Ninth Circuit on a similar question, namely: *Matsutaka* v. *Carr*, 47 F. (2d) 601, *Weedin* v. *Okada*, 2 F. (2d) 321, and a decision of the Fifth Circuit, *Kirk* v. *Lawrensen*, 24 F. (2d) 64.

WHEREFORE petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, and submits his brief hereto attached in support of this petition.

Respectfully submitted,

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York, N. Y.*

UNITED STATES OF AMERICA,
State and Southern District of New York, ss:

Harold Van Riper, being duly sworn, says that he is a member of the bar of the Supreme Court of the United States, is the attorney for the petitioner herein, and is duly authorized by said petitioner to make and execute this petition on his behalf; that he has read the foregoing petition and knows the contents thereof, and that the matters therein stated are true to the best of his knowledge, information and belief. Deponent certifies that he has examined the foregoing petition and the record herein, and that in his opinion it is well

founded, meritorious, and entitled to the favorable consideration of this Court.

HAROLD VAN RIPER.

Sworn to before me this 19th day of February, 1932.

[SEAL.] EMANUEL WEITZER,
Notary Public.

N. Y. Co. Clerk No. 734, Reg. No. 2W46.
Kings Co. Clerk No. 242, Reg. No. 228.
Term expires March 31, 1932.

BRIEF IN SUPPORT OF FOREGOING PETITION.

Point I.

Stapf's return to New York in 1929 was not an entry or arrival in the United States from a foreign country within the immigration laws; more than five years had elapsed since his true entry in 1923, and his deportation was barred by Sections 19 (8 U. S. C. 155) and 34 (8 U. S. C. 166) of the Immigration Act of February 5, 1917.

In March, 1929, Stapf had been in the United States for more than five years and was not subject to removal therefrom under any provision of the immigration laws.

At that time, in New York, he signed the articles and became a seaman of the United States, not an alien seaman, on an American vessel for a round trip voyage from New York back to New York, touching at a foreign port enroute, upon the termination of which voyage he was entitled to be discharged and paid off without any obligation under our laws to reship foreign within sixty days or any other period.

Revised Statutes, Section 4573 (46 U. S. C. 674), requires that before clearance is granted to any vessel bound on a foreign voyage, the captain shall deliver to the Collector of Customs a sworn crew list.

Sections 4574-5 (46 U. S. C. 675/6) contain provisions respecting such list.

Section 4576 (46 U. S. C. 677) requires that the master of any such vessel, on return to an American

port, shall exhibit the certified copy of the crew list with which he sailed out, and shall produce each person whose name appears thereon; and he and the owner shall be fined $400 for the failure to produce any such person, unless it is shown that such person has been properly discharged abroad with the consent of a consular official or has died or absconded or has been forcibly impressed into other service.

Section 4577 (46 U. S. C. 678) requires that the consular official shall provide for sustenance and passage to some American port for any seaman of the United States found destitute in such official's respective district. Under this section, *Matthews* v. *Offley*, Fed. Cas. No. 9290, was decided, it being held that aliens employed on American vessels are seamen of the United States within the meaning of this section. See, also, *In re Ross* (140 U. S. 453).

Section 4578 (46 U. S. C. 679) requires all masters of American vessels to transport such seamen back to an American port when so instructed by a consular official; and Section 4579 (46 U. S. C. 681), provides for allowances for such transportation.

The protective provisions of the Federal statutes above referred to relate to and enure to the benefit of "American seamen" or "seamen of the United States" as a general class, without regard to whether they are American or alien citizens.

Matthews v. *Offley*, Fed. Cas. No. 9290, and other cases herein cited and discussed.

And the solicitation for the welfare of American seamen—including persons of alien citizenship but

serving as seamen upon American vessels—shown by the statutes above referred to, and particularly the provisions requiring that they be cared for by American consuls, and, when stranded abroad, be returned to the United States, is utterly inconsistent with any theory that, when arriving back at the end of a voyage as a member of the crew of an American vessel, without having left the vessel abroad, such a seaman is to be considered an immigrant.

The case of the *Chinese Cabin Waiter* (13 Fed. 286), was under an act of Congress prohibiting the master of a vessel for bringing into the United States any Chinese laborer from any foreign port or place. The court construed the act to mean the prohibiting of bringing any such laborer embarking at a foreign port or place for the United States, and not to apply to the arrival in port of such a laborer already on board the vessel, who had shipped out on the same when it left the American port, as a member of its crew, and merely arrived back with the ship. The court, at page 289, said:

> "And in this connection it should not be overlooked that the petitioner, while on board the steamship as one of its crew, was within the jurisdiction of the United States, at all times under their protection, and amenable to their laws. An American vessel is deemed to be a part of the territory of the State within which its home port is situated, and as such a port of the territory of the United States."

In *Chinese Laborers on Shipboard*, 13 Fed. 291, the last-cited case was followed and the same rule held to

control, although the petitioners had been permitted to land temporarily at a foreign port during the voyage, but without, however, any termination of their relation as members of the crew.

The case of *Matter of Hersvik*, 1 F. (2d) 449, arose under Section 34 of the Immigration Law of February 5, 1917 (8 U. S. C. 166), which contains a special limitation of three years within which deportation proceedings may be had with respect to alien seamen who land unlawfully in the United States. The petitioners therein originally entered the country as seamen and thereafter resided in the United States or shipped on American vessels for a period of more than three years. Thereafter they shipped as members of the crew of an American vessel out of San Pedro, California, on a voyage to Chilean ports and return. They were apprehended at the return end of the voyage and ordered deported, and obtained a writ of *habeas corpus*. The court sustained the writ and ordered the petitioners released, saying, at page 450:

> "Petitioners do not come within the class known as immigrants, defined in Section 3 of the Immigration Act of 1924 as being aliens 'departing from any place outside the United States destined for the United States,' *for they did not depart from any foreign place, but departed from the United States for a continuous voyage which ended in a United States port.*" (Our italics.)

The case of *Weedin* v. *Banzo Okada*, 2 F. (2d) 321, decided by the Circuit Court of Appeals of the Ninth Circuit in November, 1924, is directly in point on the

circumstances of Stapf's return in March, 1929, and on the question of the effect of such arrival under the immigration laws. Okada entered the United States unlawfully in 1917 and continued to reside here until June, 1921; thereupon he shipped as a member of the crew of an American vessel for a voyage from ports of the United States to Oriental ports and return. At the close of the voyage, on August 26, 1921, he returned to the United States with the vessel, as still a member of the crew thereof, and continued to reside here until apprehended, on April 24, 1924. The Circuit Court of Appeals held that such arrival at the end of the voyage was not an arrival from a foreign country, and that, accordingly, Okada had not entered the United States within five years prior to the attempted deportation. The court analyzed the statutes bearing upon the question and cited the *Chinese Cabin Waiter* and *Chinese Laborers on Shipboard cases*, and at page 322, said:

> "If the appellee had remained at all times on shipboard, it would scarcely be contended that he left the United States, and the fact that he was permitted to land at Honolulu for a few hours, by the captain, did not change his status."

In the case at bar the record is absolutely silent as to whether or not Stapf went ashore or remained on board the vessel when it reached the German port.

Another case of the same kind, *Nagle* v. *Hansen*, 17 F. (2d) 557, was decided by the Ninth Circuit Court of Appeals, February 21, 1927, in which it was said:

> "Hansen shipped as a seaman from New York on a voyage to Buenos Aires and return. The

ship, however, took on a new cargo at Buenos Aires for Holland, and when that cargo was discharged, instead of returning to New York, it went to what is said to be its home port of Christiana, Norway. The vessel stayed in Norway, but, as Hansen was entitled under the shipping articles to a return passage to New York, the company paid his fare and he arrived at the port of New York on July 5, 1921, on the ship *Frederik VIII.* Upon his arrival at New York, he was allowed to enter as being 'admitted in transit,' this phrase being apparently intended to indicate that he was admitted as a seaman who intended to reship foreign. When he testified at the deportation proceedings, he said: 'I came in as a sailor, and expected to reship at any time. My occupation is that of a seafaring man.' Prior to shipping on the voyage from New York to Buenos Aires and return, Hansen had made several trips as a seaman between the same ports. There was no question made that his established calling was, as he described it, that of a seafaring man. * * *"

"The contention that Hansen was not a 'seaman' when he arrived in New York on July 5, 1921, and hence not entitled to claim the benefit of the three-year period to bar deportation, seems overtechnical. It may be admitted that a person whose occupation is that of a seaman may not claim to answer to the class specified in section 34, Immigration Act, above quoted, where he first enters this country as a passenger on a ticket of his own purchase. In this case Hansen had shipped several times out of New York for voyages to Buenos Aires and return. The ship upon which he made his last trip contracted with him for employment on a voyage between the

> ports mentioned. Deviation from that voyage, resulting in Hansen being landed at the ship's expense at the port of contracted departure, should not be held, we think, to deprive him of *the character which he had when he entered upon the voyage,* and as to which there could have been no possible question, had the ship returned to the port of New York." (Our italics.)

However, on December 6, 1926, the Circuit Court of Appeals, Second Circuit, decided the case of *U. S. ex rel. Claussen* v. *Curran,* 16 Fed. (2d) 15, which was a case wherein a seaman had entered unlawfully in 1912, never had been absent from the United States except as a member of the crews of American vessels for round trips from American ports back to American ports, and whose last foreign voyage as a member of the crew of an American vessel terminated at Boston on March 26, 1918. A little more than three years thereafter he pleaded guilty in Maine to the crime of manslaughter, and was sentenced to more than one year's imprisonment. At the end of his imprisonment the Secretary of Labor sought to deport him under Section 19 of the Immigration Act of 1917 (8 U. S. C. 155), on the ground that he had been sentenced to imprisonment for more than a year within five years after his entry into the United States. A writ of *habeas corpus* was sued out on the ground that Claussen's original unlawful entry had taken place in 1912, that his round trips as a member of the crews of American vessels had not broken the continuity of the period, that more than five years had elapsed between his entry

and the date of his sentence in 1921, and that, therefore, his deportation was barred by the five-year limitation fixed by said Section 19 of the 1917 Act, and not by the three-year limitation fixed by Section 34 thereof. In this decision the Circuit Court said:

> "* * * The exact question is whether his return on the American schooner from the foreign cruise for which he had shipped from the United States is to be deemed an entry into the United States, within the above-quoted Section 19 of the Act. The common statement which was the basis for the decisions in the *Chinese Laborer* (C. C.), 13 F. 291, and *Chinese Cabin Waiter* (C. C.), 13 F. 286, that an American vessel is to be deemed American soil, is but a fiction, and is not of universal application. *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, 38 S. Ct. 28, 62 L. Ed. 189; *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306.
>
> Clearly he was not in the United States during the voyage; equally clearly he entered the United States in March, 1918. *The question before us is neither, as in Weedin* v. *Banzo Okada* (C. C. A.), 2 F. (2d) 321, *whether within other sections of the Act that entry was legal or illegal, nor, as in petition of Hersvik* (D. C.), 1 F. (2d) 449, *whether by making such a voyage he lost any rights given under other sections of the Act to return to the United States. See, too, ex parte T. Nagata* (D. C.), 11 F. (2d) 178.
>
> *We are concerned only with the meaning of the word in connection with the deportation provision for the commission of crime, and under that section, in our judgment, the word should*

> *be given the broadest interpretation.* • • •"
> (Italics ours.)

Judge Learned Hand dissented. Thereafter a writ of certiorari was granted and in its decision, 279 U. S. 398, this Honorable Court said:

> "The question for decision is whether petitioner was sentenced within five years after his entry into the United States. • • • It is immaterial whether he was entitled to admission or whether he lawfully entered. The cause for which his deportation was ordered arose *after* entry." (Italics ours.)

From all of the foregoing it clearly is to be seen that the question as to whether or not Section 34 barred the deportation of a seaman more than three years after an illegal entry, was not before the courts in the *Claussen case.*

Judge Learned Hand's short dissenting opinion in the *Claussen case,* which case was decided solely on the question of the commission of a crime within five years after an entry, nevertheless is directly in point with the case at bar:

> "It seems to me that there is strong reason to distinguish the return of a seaman at the end of a voyage for which he has signed the articles, and on the same ship on which he left, from a reentry one has not bound oneself to make when one went away. A seaman is bound for the voyage, once he signs on; desertion is at least a civil wrong. To say that every coasting vessel or fishing smack which passes the league limit subjects all aliens on board to all condi-

> tions of admission into the United States, including, I should suppose, the quota law, seems to me an impracticable interpretation of the law; yet I can see no escape from it, if my brothers are right. It means that American crews must be made up of citizens and citizens only. That I should have thought was the opposite of the plain intention of Congress as respects our mercantile marine.
>
> "Nor can I see that we can escape considering the conflicts which our ruling raises with other statutes because they are not before us here. I can see no answer to the dilemma put by Rudkin, J., in *Weedin* v. *Banzo Okada* (C. C. A. 9) 2 F. (2d) 321, and that case is flat for the relator at bar."

It is to be noted that all of the foregoing cases relate to aliens whose original illegal entries into the United States as seamen occurred prior to July 1, 1924, the effective date of the Immigration Act of 1924, and whose last voyages as seamen of the United States on American vessels, prior to arrest in deportation proceedings, also were concluded before said date.

The first important case involving an alien who illegally entered as a seaman prior to July 1, 1924, and whose last voyage as a seaman of the United States from an American port back to an American port took place subsequent to July 1, 1924, was *Kirk* v. *Lawrenson*, C. C. A. 5, Jan. 23, 1924, in which the Court said:

> "(2) Appellee was not of an undesirable class, was qualified for admission under the Immigration Act of 1917, and was not subject to deportation for crime or for any other reason, unless it be that his return from a foreign

voyage in 1926 was unlawful. It is contrary to all reason to suppose that every return of an alien seaman having rights as an American citizen, limited and qualified though such rights may be, from a foreign voyage to a port of the United States on an American vessel, should be within the ordinary rule that every entry constitutes a new entry. As was pointed out by the Circuit Court of Appeals for the Ninth Circuit in *Weedin* v. *Banzo Okada*, 2 F. (2d) 321, to so hold would result in an irreconcilable conflict between R. S. § 5363 (18 U. S. C. A. § 486), which punishes the master of any vessel who without cause intentionally leaves a seaman in a foreign port, and section 8 of the Immigration Act of 1917 (8 U. S. C. A. § 144), which punishes the bringing into the United States of an alien not duly admitted. *Nagle* v. *Hansen* (C. C. A.) 17 F. (2d) 557, decided by the same court, is also authority for the ruling of the district court in the instant case.

The opposite view finds some support in United States v. *Curran*, 16 F. (2d) 15, *decided by the Circuit Court of Appeals for the Second Circuit; but that decision apparently recognizes that the case of Weedin* v. *Banzo Okada, supra, was correctly decided, and does not proceed on the theory that an alien seaman by making a foreign voyage on an American vessel loses any rights given him by statute, although it does hold that conviction of a crime involving moral turpitude overrides all such rights.*" (Our italics.)

See, also, *ex Parte T. Nagata* (D. C.), S. D. Cal., Feb. 19, 1926, 11 F. (2d) 178.

The point of divergence from the doctrine so long established, as aforesaid, was the decision on December 6, 1926, by the Second Circuit Court of Appeals of *Rios* v. *Day*, 24 F. (2d) 654, which, we contend, rests upon a misinterpretation of its previous decision in *Claussen* v. *Curran, supra,* affirmed by this Honorable Court.

In the *Rios case,* the sole question before the Court was as to whether or not the period of limitation should run from the date of his unlawful entry in 1918, upon the completion of a round trip on an American vessel from an American port back to an American port. The Court said:

> "While, under Section 34 of the Immigration Act of 1917, deportation of an alien seaman could not be effective unless some independent ground for deportation existed (*U. S. ex rel. Gioia* v. *Curran* (D. C.), 11 F. (2d) 904; *In re Lackides* (D. C.), 10 F. (2d) 980), under Section 14 of the act of 1924, deportation may be effected because of the fact that the seaman remained here longer than the *temporary* period allowed. This appellant abandoned his calling as a seaman, which alone gave him the right to stay for a *temporary* period only. If he remained longer, by virtue of Section 19, he was subject to deportation. His last entry in September, 1925, controls the limitation as to when he may be deported. *U. S. ex rel. Claussen* v. *Curran* (C. C. A.) 16 F. (2d) 15. His other entries are unimportant." (Italics ours.)

Here lies the error, because neither Rios in the cited case, nor Stapf in the case at bar, were, or could have

been, admitted for a "temporary" period, as a reading of the applicable statutes will show.

Section 19 of the 1924 Act (8 U. S. C. 166) is a reenactment of the relevant portion of Section 32 of the Act of February 5, 1917, and reads as follows:

> "SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel *arriving* in the United States *from any place outside thereof,* shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal or deportation of such alien from the United States." (Our italics.)

In the United States Code said section is consolidated with Section 34 of the 1917 Act barring the deportation of seamen more than three years after entry, but it has been held that such statutory bar does not apply to seamen whose original entry into the United States occurred subsequent to July 1, 1924, the effective date of the Immigration Act of 1924. *Philippides* v. *Day,* 51 S. Ct. 358.

Section 33 of the 1917 Act (8 U. S. C. 168) restricted entries under Section 32 thereof, and now restricts entries under Section 19 of the 1924 Act. The relevant portion reads as follows:

> "* * * That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel *arriving* in the United States *from any foreign port or place,* unless duly ad-

> mitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided,* That in came any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admisible under any law, convention, or treaty from remaining permanently in the United States, * * *"

To make possible the temporary admission necessary to permit entry under Section 33 of the 1917 Act and Section 19 of the 1924 Act, Congress enacted Section 3 (5) of the 1924 Act, which reads as follows:

> "SEC. 3. When used in this act the term 'immigrant' means any alien *departing from any place outside the United States* destined for the United States, except * * * (5) a *bona fide* seaman serving as such on a vessel arriving at a port of the United States and *seeking to enter temporarily* the United States solely in the pursuit of his calling as a seaman * * *" (8 U. S. C. 203). (Our italics.)

and Section 15 thereof, which reads as follows:

> "SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause 5 * * * of Section 3 * * * shall be for such time as may be by regulations prescribed * * * to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States" (8 U. S. C. 215).

The regulation promulgated by the Secretary of Labor applicable to alien seamen "departing from any

place outside the United States" and "seeking to enter *temporarily* the United States" under Section 33 of the 1917 Act and Sections 19, 3 and 15 of the 1924 Act, at the time of Stapf's return in March, 1929, was Par. 2, Subdivision I, Rule 6 of the Immigration Laws and Rules of March 1, 1927, reading as follows:

> "Where a *bona fide* alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter *temporarily* the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely *in pursuit of his calling as a seaman,* engages in any other calling or occupation for hire or profit, or enters the coastwise trade of the United States, or remains within the United States for more than 60 days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act." (Our italics.)

Certainly, neither said sections of law, nor said regulation, can have any application to an alien like Stapf who had not "departed from a foreign port or place" but who merely returned to his home port in accordance with the terms of the shipping articles under which he departed from a "domestic" port destined for that same port at the termination of his services.

Finally, notwithstanding all of the foregoing, the Ninth Circuit Court of Appeals, in *Matsutaka* v. *Carr*, 47 F. (2d) 601, holds, and we contend rightly, in con-

flict with the Second Circuit Court of Appeals on this important question, and says:

> "The question for decision is this: Is an alien seaman who had resided in the United States for a period barring his deportation for an illegal entry entitled to re-enter the United States upon his return from a fishing voyage in foreign waters as a member of the crew of an American fishing vessel? This question was answered in the affirmative by this Court in *Weedin* v. *Okada*, 2 Fed. (2d) 321, and that decision has been generally followed by the district courts of this circuit. The government concedes this, but earnestly insists that the doctrine announced by this court in the *Okada case* was in effect overruled by the Supreme Court in *U. S. ex rel. Claussen* v. *Day*, 279 U. S. 398. *With this contention we are unable to agree.* * * * Deportation was sought in the *Okada case* because of an *unlawful entry* into the United States, whereas in the *Claussen case* deportation was sought *because of the commission of a crime* involving moral turpitude *within five years after entering.* The Supreme Court held that the return to the United States at the close of the voyage to South American and Cuban ports was an entry within the meaning of the limitation provisions of Section 19 of the Immigration Act of 1917 (8 U. S. C. 155). But the *legality* of that entry was not considered, the Court stating:
>
> " 'It is immaterial whether he was entitled to admission or whether he lawfully entered. The cause for which his deportation was ordered arose after entry.'

> In other words, in the *Claussen case* the Court was only concerned with the *fact* of entry, while in this case we are chiefly concerned with the *right* of entry." (Our italics.)

In view of the dissimilarity between the *Claussen case* and the case at bar, the principles established in *Weedin* v. *Okada, Petition of Hersvik, ex Parte Nagata* and *Matsutaka* v. *Carr, supra,* should govern.

WHEREFORE it is respectfully prayed that the orders of the courts below be reversed and that the writ of habeas corpus be sustained.

HAROLD VAN RIPER,
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APR 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. [redacted] 10

UNITED STATES OF AMERICA, *ex rel.* LEO STAPF,
Petitioner,

v.

EDWARD CORSI, Commissioner of Immigration at the Port of New York.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S SUGGESTION OF ABATEMENT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 739.

UNITED STATES OF AMERICA *ex rel.*
LEO STAPF,
Petitioner,

v.

EDWARD CORSI, Commissioner of Immigration at the Port of New York.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S BRIEF IN REPLY TO RESPONDENT'S SUGGESTION OF ABATEMENT.

The Act of August 18, 1894 (28 Stat. 391, 8 U. S. C. 107), authorizing appointment of Commissioners of Immigration, provides:

> "Section 1. The Commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed, *and until their successors are appointed;* and nominations for such offices shall be made to the Senate by the President as soon as practicable after the passage of this act" (our italics).

Respondent's suggestion of abatement fails to state whether Day was "removed" for cause, or resigned. In either event his separation from office could not have become effective until his successor was appointed, *Smoot* v. *Somerville,* 59 Md. 84, 95; *State* v. *Murphy,* 13 South 705, 708, 32 Fla. 138; the object of employing such language being to prevent the occurrence of a vacancy, hiatus or interregnum between the day of the termination of incumbent's tenure of office and the day of the successor's entry upon his duties.

Respondent, at page 2, states:

> "We are advised by the Department of Labor that Day ceased to hold the office of Commissioner on September 10, 1931. On August 17, 1931, Irving F. Wixom became Acting Commissioner (Day being on leave after that date), and served as such through October 31, 1931. The present Commissioner, Edward Corsi, took office on November 1, 1931, under a recess appointment, signed October 10, 1931. He was nominated for the position on December 14, 1931, and was confirmed on December 21, 1931. Following this confirmation a commission dated December 21, 1931, was signed on December 30, 1931."

Section 178 R. S., 5 U. S. C. 5, provides:

> "*Sec. 5. Vacancies in subordinate offices.*
>
> In case of the death, resignation, absence, or sickness of the chief of any bureau, or of any officer thereof, whose appointment is not vested in the head of the department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau, shall, unless otherwise directed by the President, as provided by section 6 of this title, perform the duties of such chief or of

such officer until a successor is appointed or such absence or sickness shall cease."

We are informed and believe that on August 17, 1931, and at all relevant times subsequent thereto, Irving F. Wixon was Chief Supervisor of Immigration under the direction of the Commissioner General of Immigration at Washington, that he at no time was an assistant or deputy of Day, that he at none of said times was Chief Clerk of the Bureau of Immigration and that at no time did the President direct his appointment to fill the office of Commissioner of Immigration at the Port of New York, nor could the President have done so in view of Section 179 R. S., 8 U. S. C. 6, which limits his power to filling a vacancy of the type involved with an officer "whose appointment is vested in the President, by and with the advice and consent of the Senate," and Wixon was not such an officer. See 28 Op. Atty. Gen. 95; *State ex rel. Vanderveer* v. *Gormley,* 102 Pac. 435, 438.

Therefore, as a matter of law, Day continued to hold office, even though on leave of absence, at least until the happening of the first legal act in the premises that could possibly relieve him from duty, namely, the President's recess appointment of his successor, Edward Corsi, as Commissioner on October 10, 1931, or, possibly, until Corsi's entry upon the performance of his duties on November 1, 1931.

However, it is immaterial whether the date was October 10th, 1931, or November 1, 1931, because the prescribed period of six months has not elapsed since either of said dates.

Respondent and the Court Below Permitted Proceeding to Continue Without Objection.

Sub-sections (a) and (c) of Section 11 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (28 U. S. C. 780), provides:

> "SEC. 11. (a) That where, during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.
> * * *
>
> (c) Before a substitution under this section is made the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have."

It would seem from the language of the foregoing section that the action abates in the Court in which it is pending at

the time the officer ceases to hold office unless within six months, substantial need appearing therefor, said Court "permits" it to continue. There is nothing in said section providing for the formal making, entering and/or filing of an order of substitution.

An examination of the copies of the transcript of record on file in this Honorable Court will show that they bear the official stamp of the Clerk of the Circuit Court of Appeals, Second Circuit, as having been filed therein on November 19, 1931, and that their covers bear the title "United States of America, *ex rel.*, Leo Stapf, Relator-Appellant, against Edward Corsi, Commissioner of Immigration at the Port of New York, Respondent-Appellee", said Corsi having commenced the performance of his duties nineteen days prior to such filing. Said Corsi was represented by the United States Attorney for the Southern District of New York, upon whom three copies of said transcript of record, bound in said covers, were served. Thereafter briefs were filed on or about January 11, 1932, and oral argument was had before the Circuit Court of Appeals in which the United States Attorney participated. Thereupon said Court made an order affirming the judgment of the District Court and in due course its mandate went down to the District Court. At no time during the proceedings did the respondent or his representative, the United States Attorney, raise any objection to the continuance of the proceeding, nor did the Circuit Court of Appeals for the Second Circuit, the Court in which it was pending during Day's leave of absence, terminate the same as having abated.

The petition for writ of certiorari was filed in this Honorable Court February 29, 1932, fully ten days before

the proceeding would have abated even had Day's tenure of office terminated on September 10, 1931.

For all of the above reasons it is respectfully submitted that it would seem that the Circuit Court of Appeals and respondent "permitted" the proceeding to continue, but, if our construction of the law on this point is erroneous, the six months' period not having expired, as set forth in our first point, we respectfully ask this Honorable Court to grant permission for it to continue, in view of the fact that there is a substantial need for such continuance, the question involved being a very important and general one, which affects thousands of persons who honestly, and, in many cases by encouragement from American officers, entered the United States irregularly and are immune from deportation unless a round trip voyage from and back to an American port as a seaman of the United States tolled the statute of limitations.

Respectfully submitted,

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FILE COPY

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No. [redacted] 10

In the Supreme Court of the United States

OCTOBER TERM, 1931

UNITED STATES OF AMERICA EX REL. LEO STAPF,
PETITIONER

v.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

SUGGESTION OF ABATEMENT

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 739

UNITED STATES OF AMERICA EX REL. LEO STAPF, petitioner

v.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT the Port of New York

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

SUGGESTION OF ABATEMENT

Comes now the Solicitor General and suggests to the Court that this action has abated.

This suit was commenced by the filing of a petition for a writ of *habeas corpus* (R. 4–5) in the United States District Court for the Southern District of New York. The writ was allowed on June 2, 1931. (R. 2–3.) In the petition and in the writ Benjamin M. Day, Commissioner of Immigration, was named as respondent. (R. 1, 2, 4.) Day filed

his return to the writ (R. 7–31) on June 22, 1931 (R. 1). On June 23, 1931, an order dismissing the writ was entered. (R. 32.) On the same day an appeal to the Circuit Court of Appeals for the Second Circuit was allowed. (R. 34.) On January 11, 1932, the Circuit Court of Appeals entered an order affirming the judgment of the District Court. (R. 41–42.) The case is now pending in this Court on a petition for a writ of certiorari filed February 29, 1932.

We are advised by the Department of Labor that Day ceased to hold the office of Commissioner on September 10, 1931. On August 17, 1931, Irving F. Wixom became Acting Commissioner (Day being on leave after that date), and served as such through October 31, 1931. The present Commissioner, Edward Corsi, took office on November 1, 1931, under a recess appointment, signed October 10, 1931. He was nominated for the position on December 14, 1931, and was confirmed on December 21, 1931. Following this confirmation a commission dated December 21, 1931, was signed on December 30, 1931.

The record shows no substitution of any party defendant, and we are informed by the Clerk of the Circuit Court of Appeals for the Second Circuit that no order substituting either Wixom or Corsi for Day has been entered in that court and that the docket of the District Court Clerk's office does not show that any order of substitution was entered in the District Court.

It is therefore evident that under Section 11 (a) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (U. S. C., Title 28, Sec. 780) the time for substituting Corsi as the defendant expired not later than March 10, 1932, since Section 11 (a) permits the continuance of an action against the successor in office only where a satisfactory showing of the need for such continuance is made "within six months after [the predecessor's] death or separation from the office."

The decisions of this Court are unanimous in holding that no substitution may be made after the period provided in Section 11 (a), and that the failure to substitute within that time requires the abatement of the action. See *LeCrone* v. *McAdoo*, 253 U. S. 217, 219; *United States ex rel. Claussen* v. *Curran*, 276 U. S. 590, 591; *Matheus* v. *United States ex rel. Cunningham*, 282 U. S. 532.

Respectfully submitted.

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MARCH, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932

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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1932

UNITED STATES OF AMERICA EX REL. LEO STAPF,
PETITIONER

v.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 10

UNITED STATES OF AMERICA EX REL. LEO STAPF, petitioner

v.

EDWARD CORSI, COMMISSIONER OF IMMIGRATION AT the Port of New York

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The memorandum opinion of the District Court (R. 20) has not been reported. The *per curiam* opinion of the Circuit Court of Appeals for the Second Circuit (R. 23) is reported in 54 F. (2d) 1086.

JURISDICTION

The judgment sought to be reviewed was entered January 12, 1932. (R. 23–24.) The petition for certiorari was filed February 29, 1932, and

granted April 11, 1932, 285 U. S. 535. (R. 24.) The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the case has abated because the substitution as Commissioner of Immigration of the respondent Corsi as a party to the litigation was not moved within the time prescribed by Section 11(a) of the Act of February 13, 1925.

2. Whether the order of deportation was lawful.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Immigration Acts of 1917 and 1924 and of the other statutes involved, together with the applicable regulations issued by the Secretary of Labor, are printed in the Appendix. (*Infra*, pp. 18–25.)

STATEMENT

Petitioner, a German alien, first came to this country apparently as a member of the crew of a German vessel. He was not regularly admitted for permanent residence. He deserted his ship, S. S. *Hansa,* on February 15, 1923 (R. 2, 15), and remained in this country until March, 1929, when he signed as a member of the ship's crew aboard the American vessel, S. S. *America,* for a voyage to Germany and return (R. 2). The ship stayed in Germany two and a half days. (R. 11.) He arrived back in this country on either April 1st or

15th, 1929. (R. 3, 5, 7, 11.) He was discharged from the vessel at the end of the voyage, but was not examined by any immigration officer, was not in possession of an immigration visa, and did not pay a head tax. (R. 11–13.) On March 20, 1931, a warrant was issued for petitioner's arrest. (R. 6.) This warrant charged that petitioner had remained in the United States for a longer time than permitted by the Immigration Act of 1924 and the regulations of the Secretary of Labor thereunder. He was accorded a hearing by the immigration authorities on March 27, 1931 (R. 8), at which time he stated, among other things, that he was employed as a butcher in a hotel in Key West, Florida (R. 10). The immigration authorities found that the charge recited in the warrant of arrest was sustained, and a warrant of deportation issued on April 3, 1931. (R. 18–19.) Petitioner thereupon filed in the United States District Court for the Southern District of New York a petition for a writ of habeas corpus, which alleged that he was illegally detained under the warrant of deportation for the reason that as he had been in this country more than eight years since his original entry in 1923, deportation was barred by the provisions of Section 34 of the Immigration Act of 1917, the continuity of his residence not being broken by the trip abroad in 1929. (R. 2–3.) The writ issued (R. 1–2) and a return was filed by the immigration authorities (R. 3–5). After a hearing the District Court ordered that the writ

be dismissed. (R. 20.) An appeal from this order was taken to the Circuit Court of Appeals for the Second Circuit, but the order was affirmed by a *per curiam* decision rendered in open court. (R. 23.)

SUMMARY OF ARGUMENT

We do not now urge the suggestion of abatement. The statute relative to the appointment of Commissioners of Immigration is unique in that the office is vacated not at the expiration of the term of an incumbent but when a successor is appointed. This Court has held that under a similar State statute a resignation to become effective must be followed by the additional fact of the appointment and qualification of a successor. Although the resignation of Day as Commissioner of Immigration was accepted in September, 1931, the successor was not appointed until October 10, 1931. Petitioner's request that the case be continued against the successor was filed on April 2, 1932, within six months of the recess appointment. As this complies with the statutory requirement for the substitution of a successor in office, we do not press the suggestion of abatement.

The original entry of the petitioner into this country in 1923 did not entitle him to remain permanently. As an alien seaman he was entitled to temporary admission to this country to reship to a foreign port. When he remained here he was subject to arrest and deportation. But the statu-

tory limitation of three years' residence here after his original entry prevented action for his deportation on that ground. Consequently, in 1926, although unlawfully here, he had acquired a right to remain. But when he returned to this country as a member of the crew of the ship *America,* after a round-trip voyage to Germany, his arrival constituted a new entry to the country. Although this entry was not unlawful in that as an alien seaman he was permitted sixty days in which to reship foreign, his stay here in excess of that period was unlawful and subjected him to deportation. The order of deportation issued in this case was based on the petitioner's unlawful stay in this country after his entry in 1929. It is in no way based on the entry in 1923 or continued residence here after his original temporary admission had expired. The petitioner's contention that his original residence in this country was not interrupted by the voyage to Germany and return is not in accord with the decision of this Court in *United States ex rel. Claussen* v. *Day,* 279 U. S. 398.

ARGUMENT

I

THE SUGGESTION OF ABATEMENT DOES NOT APPEAR TO BE SUPPORTED BY THE DECISIONS OF THIS COURT

In reply to the petition for certiorari the Government filed a suggestion that the case had abated. In the writ of habeas corpus Benjamin M. Day, Commissioner of Immigration, was named as respond-

ent, and the return to the writ was filed on his behalf. Day, we are advised by the Department of Labor, was reappointed as Commissioner on April 5, 1930, and held office when the writ issued. After the writ of habeas corpus had been dismissed by the District Court and the case had been appealed to the Circuit Court of Appeals, Day, on September 2, 1931, submitted his resignation. It was accepted by the President on September 22, 1931, but was considered by the Department of Labor to become effective September 10, 1931, when Day's annual leave apparently expired. On August 17, 1931, Irving F. Wixon became Acting Commissioner (Day being on leave from that date). Wixon served through October 31, 1931. The present Commissioner, Edward Corsi, took office on November 1, 1931, under a recess appointment signed October 10, 1931. He was nominated for the position on December 14, 1931, and confirmed on December 21, 1931. Following this confirmation his commission, dated December 21, 1931, was signed on December 30, 1931.

It was also pointed out in the Suggestion of Abatement that "the record shows no substitution of any party defendant, and we are informed by the Clerk of the Circuit Court of Appeals for the Second Circuit that no order substituting either Wixon or Corsi for Day has been entered in that court and that the docket of the District Court Clerk's office does not show that any order of substitution was

entered in the District Court." It was argued that the case had abated because under Section 11 (a) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (U. S. C., Title 28, Sec. 780), *infra*, p. 18, the time for substituting Corsi as a party expired not later than March 10, 1932, six months from the date Day's resignation was considered to be effective.

However, in his reply to the Suggestion of Abatement petitioner called attention to the Act of August 18, 1894, c. 301, Section 1, 28 Stat. 372, 391 (U. S. C., Title 8, Sec. 107), which provides:

> The commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed, *and until their successors are appointed;* * * *. (Italics ours.)

It was argued that this statute had the effect, despite Day's resignation, of continuing him in office until at least the recess appointment of Day's successor, Corsi. Petitioner's reply brief was filed in this Court on April 2, 1932, and, in accordance with his construction of the statute, he contended that there was still time under Section 11(a) of the Act of 1925 to seek a substitution, and accordingly requested this Court to permit the cause to be continued against Corsi.

Section 11(a) of the Act of 1925 permits substitution where a Federal officer "dies, resigns, or otherwise ceases to hold such office." In such an

event substitution of a successor may be made if cause is shown therefor within six months after the predecessor's "death or separation from the office." The ultimate question is whether, under a statute such as the one under which Commissioners of Immigration are appointed, the officer ceases to hold office or is separated from his office when he resigns and his resignation is accepted by the President. We are not concerned with what effect the death, removal from office, or suspension of a Commissioner of Immigration may have upon his tenure of office.

The statute under which Commissioners of Immigration are appointed was introduced on the floor of the Senate at the instance of the Senate Committee on Immigration as an amendment to a bill making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895, and was adopted without debate or comment. (Cong. Rec., Vol. 26, Part 8, p. 8063.) Although it is similar to some of the earlier Federal statutes relating to the appointment of public officers (see 17 Op. A. G. 648, 649), we have found no case arising under these statutes which throws any light on the question involved. However, the statute finds its counterpart in a number of State statutes relating to the election and appointment of public officials. While there are apparently but few decisions construing such statutes where the resignation of an officer is in-

volved, these decisions are practically unanimous in holding that the officer continues in office and is not relieved from his duties and responsibilities as such officer until his successor has qualified, even though he has tendered his resignation and such resignation has been accepted by the proper authority. This Court, in *Badger* v. *United States ex rel. Bolles,* 93 U. S. 599, considered an Illinois statute providing for the election of certain town officers who were to hold their offices for specified terms and "until their successors are elected and qualified" and held that, having submitted their resignations, which had been duly accepted by proper authority, the officers in question, nevertheless, remained in office until their successors were qualified.

We see no escape from the controlling effect of that decision in the instant case. Other decisions supporting the view taken by this Court in the *Badger case* are *Amy* v. *Watertown* (*No. 1*), 130 U. S. 301, 315; *United States* v. *Justices of Lauderdale County,* 10 Fed. 460 (C. C., W. D. Tenn.); *United States* v. *Green,* 53 Fed. 769 (C. C., W. D. Mo.); *People* v. *Supervisor,* 100 Ill. 332; *Jones* v. *City of Jefferson,* 66 Tex. 576; *State ex rel. Wheeler* v. *Nobles,* 109 Wis. 202; *State* v. *Harrison,* 113 Ind. 434; 25 Op. A. G. 636. The only contrary authority we have found is *Olmsted* v. *Dennis,* 77 N. Y. 378, 386. It was said of this decision in a note in 36 Am. St. Rep. 527 that the rule announced therein "is not supported by reason or the weight of current authority."

As petitioner's reply to the Government's Suggestion of Abatement requested that the cause be continued against Corsi, and as that reply was filed on April 2, 1932, which was within six months of the recess appointment of Corsi, we consequently do not, in view of the decisions cited, press the contention that the action has abated.

In view of our position, we deem it unnecessary to discuss the contention that Wixon under the statutes which petitioner cites was not qualified to serve as an Acting Commissioner of Immigration. In any event the statutes indicate that Wixon may not be regarded as Day's successor in office. R. S. 178 (U. S. C., Title 5, Sec. 5), *infra*, p. 19; R. S. 179 (U. S. C., Title 5, Sec. 6), *infra*, p. 19.

II

THE ORDER OF DEPORTATION WAS LAWFUL

The petitioner's desertion as a member of the crew of the S. S. *Hansa* on February 15, 1923, did not entitle him to remain in this country permanently. The provisions of Section 32 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 895 (*infra*, p. 20), only permitted alien seamen to enter the country temporarily for the purpose of reshipping to a foreign port. That he deserted and did not comply with the requirements for temporary admission as an alien seaman is not significant. *Philippides* v. *Day*, 283 U. S. 48. If the entry was lawful it was only for a temporary purpose. When

he abandoned this purpose his continued presence here rendered him subject to arrest and deportation unless he could establish his qualification for permanent admission under the provisions of Section 34 of the Immigration Act of 1917 (*infra,* p. 21). However, upon the expiration of three years after his original entry he could not have been deported, and since he remained in this country more than three years, he was not subject to deportation on any ground relating to his original entry or his continued presence here thereafter. The Immigration Act of 1924 in no way qualified or limited his status under the Act of 1917 so long as he remained in this country (Act of May 26, 1924, c. 190, Sec. 14, 43 Stat. 153, 162; U. S. C., Title 8, Sec. 214, *infra,* p. 22). Consequently the present proceedings and the alleged unlawful presence of the petitioner in this country in no way depend upon his original arrival in 1923. The validity of his deportation depends upon his entry in 1929 and his continued presence here.

In March, 1929, the petitioner joined the crew of the American vessel S. S. *America* for a trip from New York to Germany and return. He arrived, upon completion of this round-trip voyage, in New York in April, 1929, and was discharged as a member of the crew from that vessel. The record does not disclose that the petitioner was admitted for permanent residence at that time. The necessary formalities for this kind of admission apparently

were not complied with. The petitioner does not claim that he was then admitted for permanent residence. He was not inspected, paid no head tax, and had no immigration visa. (R. 11–13.)

But his entry was lawful for a temporary stay under the provisions of Sections 3 (5), 15, and 19 of the Immigration Act of 1924, c. 190, 43 Stat. 153, 162, 164 (U. S. C., Title 8, Secs. 203, 215, 166), *infra*, pp. 21, 23. Under the regulations prescribed by the Secretary of Labor under these sections (*infra*, p. 24), the petitioner, as an alien seaman, was allowed a period not in excess of sixty days to remain in this country for the purpose of reshipping foreign. The petitioner remained in excess of the sixty days and was apprehended on or about March 20, 1931. Section 14 of the Immigration Act of 1924 (*infra*, p. 22) requires the deportation of alien seamen who remain in this country beyond the period of sixty days permitted by the regulations.

The arrival in April of 1929 in the United States of the petitioner as a member of the crew of the American ship *America* was an entry into this country notwithstanding that the round-trip voyage was on an American vessel. *United States ex rel. Claussen* v. *Day*, 279 U. S. 398. The ship *America*, on which the petitioner made his voyage from New York to Germany and return in 1929, remained two and a half days in Bremerhaven. (R. 11.) Consequently when petitioner arrived in New York from Germany it was a "coming from

outside" and "an arrival from some foreign port or place."

Although the petitioner did not comply with any of the regulations relative to an entry as an alien seaman (Rule 6, subdiv. E, pars. 1, 4, Immigration Rules of March 1, 1927, *infra*, pp. 23–24), the fact of entry is controlling. He had no right to enter or remain here except in accordance with the law. *United States ex rel. Polymeris* v. *Trudell*, 284 U. S. 279. That he entered without permission does not entitle him to more than sixty days' stay in this country. *Philippides* v. *Day, supra.* When he remained here more than sixty days he became subject to deportation under the provisions of Section 14 of the Act of 1924 (*infra*, p. 22). This is the basis of the deportation order issued in the instant case.

The petitioner contends that under certain statutes which he cites, a typical example of which is Section 295 of the Criminal Code (originally R. S. 5363), *infra*, p. 20, the master of the ship *America* was obliged to bring him back to this country after the completion of the round-trip voyage on which he had shipped. From this the petitioner concludes that his entry in April of 1929 was not unlawful and that he acquired the right to remain here permanently. *Weedin* v. *Okada*, 2 F. (2d) 321 (C. C. A. 9th); *Matsutaka* v. *Carr*, 47 F. (2d) 601 (C. C. A. 9th). But the obligation of the commander of the ship *America* in no way extended the right of the petitioner to remain here longer

than the period permitted by the statutes and regulations. Conceding that petitioner's entry was not unlawful, as an alien seaman it was for a limited period only and not for permanent residence. When he remained here longer than the authorized sixty days he became subject to deportation. The question of his deportation because of the illegality of the entry is not involved. The authority of the Secretary of Labor to deport petitioner is predicated on his remaining in this country in excess of the permitted period rather than the manner of entry.

It might be urged that since petitioner could not have been deported more than three years after he originally came to this country in 1923, when he was discharged as one of the crew of the ship *America* in 1929, he was an "immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad," and enjoyed the status of a nonquota immigrant as defined by Section 4 of the Immigration Act of 1924 (*infra*, p. 22). But the difficulty with this position is that the petitioner was not lawfully admitted for permanent residence in 1923, when he first came here. In *United States ex rel. Georgas* v. *Day*, 43 F. (2d) 917 (C. C. A. 2d) it is said (p. 919):

> Leave to "land" in order to reship is quite another thing from being "admitted"; section thirty-three [1917 Act] makes the distinction in terms. Such leave gives no more than a short, though indefinite, time within which the seaman must find a new berth.

Admission on the other hand is an act of the authorities, accepting the alien into the body of our inhabitants, not indeed as a citizen, but as a possible resident, whose stay may be permanent unless something unforeseen happens. A seaman who breaks his leave can not therefore be said to have been "admitted" (*Domenici* v. *Johnson,* 10 F. (2d) 433 (C. C. A. 1)), any more than one who enters contrary to the provisions of the Act of 1917 (*Hurst* v. *Nagle,* 30 F. (2d) 346 (C. C. A. 9)). It is true that Georgas could not have been deported when he left in December, 1924; the statute had run in his favor. But again that was not an "admission," even if he was then qualified for admission as prescribed by section thirty-four [1917 Act]. Assuming that that section applied at all to his case, and that the decision of a Board of Special Inquiry upon his arrest would constitute an "admission," no such finding was made; it was too late to make one. His status was still that of one who got in without admission, though it was too late to disturb him. It is true that practically he was in the same position for most purposes as one who had been admitted; we can not agree for that reason that the authorities had passed him, and that appears to us the meaning of the word. * * *

* * * * *

We should have to say either that the original leave was an "admission," or that its breach, when cured by time, became one;

the first is patently untrue, it seems to us too great a strain to say that the second is an equivalent of a decision of the authorities.

Petitioner does not contend that his original entry in 1923 was a lawful admission for permanent residence, and, as the *Georgas* decision holds, it was not converted into such by reason of the fact that he was fortunate in escaping deportation during the applicable statutory period.

Other decisions which may be cited in support of the Government's position are *Zurbrick* v. *Borg,* 47 F. (2d) 690 (C. C. A. 6th); *McCandless* v. *United States ex rel. Pantoja,* 44 F. (2d) 786 (C. C. A. 3d); *Schmucker* v. *Martinez,* 37 F. (2d) 315 (C. C. A. 4th); *United States ex rel. Rios* v. *Day,* 24 F. (2d) 654 (C. C. A. 2d), certiorari denied, 277 U. S. 604; *Ex parte Tatsuo Saiki,* 49 F. (2d) 469 (W. D. Wash.); *United States ex rel. Anderson* v. *Karnuth,* 46 F. (2d) 689 (W. D. N. Y.); *United States ex rel. Harrington* v. *McCandless,* 43 F. (2d) 760 (N. J.); *Ex parte Sturm,* 38 F. (2d) 272 (S. D. N. Y.); *United States ex rel. Bardakos* v. *Mudd,* 33 F. (2d) 334 (Md.).

Petitioner cites several decisions which rest upon the doctrine that an American ship is American territory to support the contention that he did not leave and reenter the country in 1929. But this Court has held in the *Claussen case, supra,* that this doctrine has no application to a case of this kind.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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OCTOBER, 1932.

APPENDIX

STATUTES INVOLVED

Section 11 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (U. S. C., Title 28, Sec. 780), relating to the survival of actions pending in the courts of the United States, provides:

> (*a*) That where, during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.
>
> * * * * *
>
> (*c*) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the ap-

plication therefor and accorded an opportunity to present any objection which he may have.

Section 1 of the Act of August 18, 1894, c. 301, 28 Stat. 372, 391 (U. S. C., Title 8, Sec. 107), provides:

> The commissioners of immigration at the several ports shall be appointed by the President, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed, and until their successors are appointed.

R. S. 178 (U. S. C., Title 5, Sec. 5) provides:

> In case of the death, resignation, absence, or sickness of the chief of any bureau, or of any officer thereof, whose appointment is not vested in the head of the Department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease.

R. S. 179 (U. S. C., Title 5, Sec. 6) provides:

> In any of the cases mentioned in the two preceding sections, except the death, resignation, absence, or sickness of the Attorney-General, the President may, in his discretion, authorize and direct the head of any other Department or any other officer in either Department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.

R. S. 180 (U. S. C., Title 5, Sec. 7) provides:

> A vacancy occasioned by death or resignation must not be temporarily filled under the three preceding sections for a longer period than thirty days. * * *

Section 295 of the Criminal Code, originally R. S. 5363 (U. S. C., Title 18, Sec. 486), provides:

> Whoever, being master or commander of a vessel of the United States, while abroad, maliciously and without justifiable cause forces any officer or mariner of such vessel on shore, in order to leave him behind in any foreign port or place, or refuses to bring home again all such officers and mariners of such vessel whom he carried out with him, as are in a condition to return and willing to return, when he is ready to proceed on his homeward voyage, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

The Immigration Act of 1917, c. 29, 39 Stat. 874, 895, 896, so far as material, provides:

> SEC. 32. That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such

vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding $1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act.

The Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 155, 158, 161, 162, 164, so far as pertinent, reads as follows:

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, * * *. (U. S. C., Title 8, Sec. 203.)

SEC. 4. When used in this Act the term "non-quota immigrant" means—

* * * * *

(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad; * * *. (U. S. C., Title 8, Sec. 204.)

SEC. 10. * * * Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reenter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph. (U. S. C., Title 8, Sec. 210 (a).)

SEC. 13. * * * No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws. (U. S. C., Title 8, Sec. 213 (a).)

SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917: * * *. (U. S. C., Title 8, Sec. 214.)

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a non-quota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clauses (2), (3), (4), or (6) of section 3, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. (U. S. C., Title 8, Sec. 215.)

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States. (U. S. C., Title 8, Sec. 166.)

REGULATIONS OF THE SECRETARY OF LABOR

The Immigration Rules of March 1, 1927, which were in effect at the time of petitioner's last entry, contain the following pertinent provisions:

RULE 6, SUBDIVISION E

PARAGRAPH 1. In addition to the medical examination hereinafter provided for, all seamen arriving in ports of the United

States shall be regularly inspected by immigrant inspectors.

PAR. 4. An alien seeking to enter the United States pursuant to the provisions of subdivision (5) of section 3 of the immigration act of 1924 shall establish to the satisfaction of the proper immigration official at the port of arrival (1) that he is a bona fide seaman; (2) that his name appears on the duly visaed crew list of the vessel on which he arrives; (3) that he is an employee of such vessel and in good faith signed on her articles; (4) that he seeks to enter solely on business of such vessel, or that he seeks to enter solely in pursuit of his calling as a seaman; and (5) that he has no intention to abandon such calling; and where such immigration official is not so satisfied he shall order the owner, charterer, agent, consignee, or master of the vessel on which such alien arrives to detain such alien on board and deport him in the manner required by law: *Provided,* That an alien seaman whose name is not included on a visaed crew list may be allowed to land, if otherwise entitled to land, upon the permission of the Secretary of State.

RULE 6, SUBDIVISION I

PAR. 2. Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than 60 days after

such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

U. S. GOVERNMENT PRINTING OFFICE: 1933

SUPREME COURT OF THE UNITED STATES.

No. 10.—October Term, 1932.

The United States of America *ex rel.* Leo Stapf, Petitioner, *vs.* Edward Corsi, Commissioner of Immigration.	On Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

[November 7, 1932.]

Mr. Justice Roberts delivered the opinion of the Court.

By writ of *habeas corpus* petitioner challenged the legality of his arrest for deportation as an alien alleged to have remained in the United States in violation of the terms of Sec. 14 of the Immigration Act of 1924 (ch. 190, 43 Stat., 153, 162). That section provides:

"Any alien who at any time after entering the United States is found . . . to have remained therein for a longer time than permitted under this Act and regulations made thereunder, shall be taken into custody and deported . . .".

The undisputed facts are that petitioner, a German citizen, deserted his ship, the *Hansa*, February 15, 1923, in the port of New York, and remained in this country until March, 1929, when he signed as a member of the crew of a vessel of United States registry, the *America*, for a voyage to Germany and return. This vessel stayed in Germany two and a half days; but it does not appear whether petitioner went ashore. He arrived in the United States on the return voyage in April, 1929, and was discharged from the ship, but was not examined by any immigration officer, nor did he possess an immigration visa or pay a head tax. On March 20, 1931, while working in Florida as a butcher, he was arrested on a warrant charging that he had remained in the country for a period longer than permitted by the Immigration Act of 1924 and the regulations thereunder. After hearing an order of deportation was made. On this showing the District Court dismissed the writ and the Circuit Court of Appeals affirmed.

The entry in 1923 was irregular, and petitioner was not entitled to remain.[1] Under the statute then in force he was subject to be deported; but such action could be taken only within three years of his entry.[2] The Immigration Act of 1924 did not alter the status of one who had unlawfully entered the country or remained after the passage of the act of 1917,[3] but abolished the three year period of limitation only as to those entering after 1924. Section 14, quoted *supra*; ***Philippides*** v. ***Day***, 283 U. S. 48. The petitioner was therefore entitled to invoke immunity under the act of 1917 unless he lost it by making the voyage to Germany in 1929.

The question is whether by so doing he made a new entry into the United States which left him amenable to the provisions of the act of 1924. The court below answered in the affirmative.[4] Other Circuit Courts of Appeal have held the contrary.[5] In view of these conflicting decisions certiorari was granted.

The relator's arrival in the United States in April, 1929, was an entry into this country notwithstanding he was a member of the crew of an American ship which had made a round-trip voyage. He came from a place outside the United States, and from a foreign port or place, within the meaning of the immigration laws; *United*

[1]Sec. 32 of the Act of February 5, 1917, ch. 29, 39 Stat. 874, 895, then in force, but since repealed by the Immigration Act of 1924, provided: "That no alien excluded from admission into the United States by any law . . . and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, . . ."

[2]Sec. 34 of the Act of February 5, 1917, ch. 29, 39 Stat. 874, 896: "That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported . . ."

[3]Sec. 20 (d) of the Immigration Act of 1924, ch. 190, 43 Stat. 153, 165: "Section 32 of the Immigration Act of 1917 is repealed, but shall remain in force as to . . . all seamen, arriving in the United States prior to the enactment of this Act."

[4]*United States ex rel. Stapf* v. *Corsi*, 54 F. (2d) 1086.

States ex rel. Claussen v. *Day,* 279 U. S. 398. While that case construed Section 19 of the act of February 5, 1917, and the time limitation on deportation therein contained, the decision as to what constitutes an entry is equally conclusive in construing other sections of the immigration law.

That petitioner entered without permission does not entitle him as an alien seaman to more than sixty days' stay in the United States. His non-compliance with the regulations respecting such seamen can not confer upon him greater rights than if he had satisfied their requirements. *Philippides* v. *Day, supra.*

The statutes requiring the master of a ship, under penalties, to bring back to the United States a seaman who signs for a round-trip voyage are said to make the entry of April, 1929, lawful. The argument, in substance based upon the theory that an American vessel is American soil, was effectively answered, as respects the requirements of the Immigration Acts, in the *Claussen* case, *supra.* Irrespective of any statutory duty to return the seaman to this country, the petitioner's entry would have been lawful had be complied with the provisions of statute and regulation for temporary sojourn as an alien seaman. The obligation of the master to return him did not, as contended, confer the right to remain here permanently.

If we are to disregard petitioner's status as an alien seaman, the law required that he should have submitted himself to inspection, should have produced an immigration visa, and paid a head tax, if as an immigrant he desired to apply for citizenship.[6] He did none of these things, and in this aspect remained here in violation of law.

The suggestion is made that since the relator could not have been deported after the expiration of three years from his original entry in 1923, his status when discharged as one of the crew of the *America* in 1929 was that of an "immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad", and thus he was a non-quota immigrant within Section 4 of the act of 1924.[7] But he was not lawfully admitted

[5] *Kirk v. Lawrenson,* 24 F. (2d) 64 (C. C. A. 5); *Weedin* v. *Okada,* 2 F. (2d) 321 (C. C. A. 9); *Matsutaka* v. *Carr,* 47 F. (2d) 601 (C. C. A. 9).

[6] U. S. C., Tit. 8, §§ 132, 167 (a), 202, 203, 204, 205, 208.

[7] U. S. C., Tit. 8, § 204.

for permanent residence in 1923, and his stay here can not be converted into such lawful residence by the mere fact that the then applicable statute limited the time within which deportation proceedings could be had. *United States ex rel. Georgas* v. *Day*, 43 F. (2d) 917.

The judgment is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.